



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0076]

RIN 1625-AA00

Safety Zone; Baltimore Air Show, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish a temporary safety zone during the "Baltimore Air Show", which consists of aerial practices, performance demonstrations and air shows, to be held over certain waters of the Patapsco River adjacent to the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland from June 14, 2012 through June 17, 2012. This proposed rule is necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in portions of the Patapsco River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER**

**DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0076 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil). If you have questions on viewing or submitting material to the

docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0076), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address,

or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2012-0076" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0076" and click "Search."

Click the "Open Docket Folder" in the "Actions" column.

You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## Background and Purpose

The U.S. Navy History & Heritage Command, Office of Commemorations, is planning to conduct the "Baltimore Air Show" on June 15, 2012, June 16, 2012 and June 17, 2012. The public event will consist of military and civilian aircraft performing low-flying, high-speed precision maneuvers and aerial stunts over specified waters of the Patapsco River and navigable channels in Baltimore Harbor. In addition to the air show dates, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over specified waters of the Patapsco River and navigable channels in Baltimore Harbor on June 14, 2012. A large spectator fleet is anticipated for the event, as part of the War of 1812 Bicentennial Commemoration activities. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard proposes to temporarily restrict vessel traffic on specified waters of the Patapsco River in the vicinity of the practices, demonstrations and air shows. To address safety concerns during the event, the Captain of the Port, Baltimore proposes to establish a safety zone upon certain waters of the Patapsco River. This proposed zone addresses safety concerns immediately outside the aerobatic show box, including the required patrols of law

enforcement and safety vessels, establishment of emergency egress routes, and sponsor-designated spectator areas.

#### Discussion of Proposed Rule

The Captain of the Port Baltimore is proposing to establish a temporary safety zone for certain waters of the Patapsco River, located adjacent to the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland. The proposed zone is in the interest of public safety during the Baltimore Air Show. The proposed zone is located south of Locust Point, between Port Covington and Seagirt Marine Terminal, within all waters in the area bounded by a line connecting position latitude  $39^{\circ}16'00''\text{N}$ , longitude  $076^{\circ}36'30''\text{W}$ ; thence to latitude  $39^{\circ}16'00''\text{N}$ , longitude  $076^{\circ}33'00''\text{W}$ ; thence to latitude  $39^{\circ}14'30''\text{N}$ , longitude  $076^{\circ}33'00''\text{W}$ ; thence to latitude  $39^{\circ}14'30''\text{N}$ , longitude  $076^{\circ}36'30''\text{W}$ ; thence to the point of origin. This safety zone will be enforced from 10 a.m. until 6 p.m. each day from June 14, 2012 through June 17, 2012. Within the proposed safety zone, an aerobatic show box, approximately 12,000 feet long and 3,000 feet wide, is located within an area bounded by a line connecting position latitude  $39^{\circ}15'44''\text{N}$ , longitude  $076^{\circ}35'55''\text{W}$ ; to latitude  $39^{\circ}15'19''\text{N}$ , longitude  $076^{\circ}33'25''\text{W}$ ; thence to latitude  $39^{\circ}14'49''\text{N}$ , longitude  $076^{\circ}33'35''\text{W}$ ; thence to latitude  $39^{\circ}15'15''\text{N}$ ,

longitude 076°36'04"W; thence to point of origin. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his designated representative, no person or vessel may enter or remain in the safety zone. U.S. Coast Guard vessels will be provided to enforce the safety zone. The Captain of the Port Baltimore will issue Broadcast Notices to Mariners to publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it



under that those Orders. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a

substantial number of small entities for the following reasons. The safety zone is of limited size and duration. Maritime advisories will be widely available to the maritime community before the effective period.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, Coast Guard Sector Baltimore, Waterways Management Division, at telephone number 410-576-2674. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of

materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves establishing a temporary safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary section, § 165.T05-0076 to read as follows:

§ 165-T05-0076 Safety Zone; Baltimore Air Show, Patapsco River, Baltimore, MD.

(a) Regulated areas. The following locations are a regulated area: (1) All waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°16'00"N, longitude 076°36'30"W; thence to latitude 39°16'00"N, longitude 076°33'00"W; thence to latitude 39°14'30"N, longitude 076°33'00"W; thence to

latitude 39°14'30"N, longitude 076°36'30"W; thence to the point of origin, located adjacent to the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland.

(2) Within the regulated area described in paragraph (a)(1) of this section, an aerobatic show box is located on all waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°15'44"N, longitude 076°35'55"W; to latitude 39°15'19"N, longitude 076°33'25"W; thence to latitude 39°14'49"N, longitude 076°33'35"W; thence to latitude 39°15'15"N, longitude 076°36'04"W; thence to point of origin. All coordinates reference Datum NAD 1983.

(b) Definitions: As used in this section: (1) Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Regulations: The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0076. (1) All persons



are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) Enforcement periods: This section will be enforced from 10 a.m. until 6 p.m. on June 14, 2012, from 10 a.m. until 6 p.m. on June 15, 2012, from 10 a.m. until 6 p.m. on June 16, 2012, and from 10 a.m. until 6 p.m. on June 17, 2012.

Dated: February 23, 2012

Mark P. O'Malley  
Captain, U.S. Coast Guard  
Captain of the Port Baltimore

[FR Doc. 2012-5547 Filed 03/06/2012 at 8:45 am; Publication Date: 03/07/2012]